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a tribe or band by other Indians . . . are definitely present." Finally, the memorandum cited an unratified treaty between the United States and ancestors of the Burns Paiutes as showing that they have had treaty relations with the government.⁹⁸

It is insufficient, however, to show that any of the foregoing elements existed at a time previous to a current evaluation of tribal status. As the solicitor for Indian Affairs stated in determining the status of the Miami and Peoria Indians under the Oklahoma Indian Welfare Act:

The word "recognized" as used in the Oklahoma Indian Welfare Act involves more than past existence as a tribe and its historical recognition as such. There must be a currently existing group distinct and functioning as a group in certain respects and recognition of such activity must have been shown by specific actions of the Indian Office, the Department, or by Congress.⁹⁹

In addition to providing eligibility for existing groups to organize under the IRA, section 19 of the IRA included within the definition of a tribe "the Indians residing on one reservation."¹⁰⁰ To apply section 19, it is necessary to consider the section's definition of the term Indian:

[A]ll persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and . . . all other persons of one-half or more Indian blood.¹⁰¹

Read together, these definitions make three classes of "Indians residing on one reservation" eligible to organize under the IRA: (1) members of any recognized Indian tribe now under federal jurisdiction;¹⁰² (2) descendants of members of any such recognized Indian tribe, who resided on any reservation on June 1, 1934; and (3) Persons of one-half or more Indian blood. Individuals fitting these

⁹⁸ Memo. from Acting Associate Solicitor for Indian Affairs to Comm'r of Indian Affairs, Nov. 16, 1967 (M 36759) (available from BIA).

⁹⁹ Memo. Sol. Int., Dec. 13, 1938. See also 25 U.S.C. §§ 501-510 (Oklahoma Indian Welfare Act).

¹⁰⁰ 25 U.S.C. § 479.

¹⁰¹ 25 U.S.C. § 479.

¹⁰² Federal regulations define the term "tribe" as: "(1) Any Indian entity that has not voted to exclude itself from the Indian Reorganization Act and is included, or is eligible to be included, among those tribes, bands, pueblos, groups, communities, or Alaska Native entities listed in the Federal Register pursuant to Section 83.6(b) of this chapter as recognized and receiving services from the Bureau of Indian Affairs; and (2) any group of Indians whose members each have at least one-half degree of Indian blood for whom a reservation is established and who each reside on that reservation. Such tribes may consist of any consolidation of one or more tribes or parts of tribes." 25 C.F.R. § 81.1(w).

definitions but not residing on a reservation cannot organize under the IRA, but are nevertheless eligible to enjoy some of its provisions.¹⁰³ One provision of the IRA gives the Secretary discretionary authority to accept or purchase land in trust for "Indians" included within its provisions.¹⁰⁴ The Solicitor has held that the Secretary may exercise this authority for all individuals of one-half or more Indian blood. Once these individuals become the beneficiaries of land held in trust they can organize themselves as a government and, as a "reservation" tribe or band, become eligible for organization under the IRA.¹⁰⁵ In other cases, nonreservation tribes have become eligible for organization under the IRA by first being recognized as a tribe under the IRA and then having the Secretary take land in trust for the tribe.¹⁰⁶

[e]—Claims Against the Government

Like the IRA, the Indian Claims Commission Act of 1946 (Act) also required federal officials to make threshold determinations of tribal status before a group could assert a claim against the United States under the Act. The Act created a commission to resolve claims arising before 1946, and provided for jurisdiction in the Court of Claims (now Court of Federal Claims) for claims arising after that date.¹⁰⁷ The Indian Claims Commission was empowered to hear claims "on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska."¹⁰⁸ According to a Solicitor's Opinion from 1948, claimants under the Act must be "a group whose political existence has been recognized by Congress or the Executive Branch of the Government, or one which in the absence of such recognition has

¹⁰³ See, e.g., *Maynor v. Morton*, 510 F.2d 1254 (D.C. Cir. 1975).

¹⁰⁴ 25 U.S.C. § 465. See Ch. 15, § 15.07[1].

¹⁰⁵ Memo. Sol. Int., Jan. 29, 1941. This memo held that the Secretary could purchase land in trust for the St. Croix Indians of one-half or more Indian blood, and, once they had established a land base, they could organize under the IRA and admit individuals of less than half blood to membership. The St. Croix Indians earlier were held to have abandoned tribal relations and to be ineligible for recognition as a band. See also Memo. Sol. Int., Feb. 8, 1937. This approach has also been used for the Quartz Valley Indians, Duckwater Shoshone Indians, Yomba Shoshone Indians, Port Gamble Band of Clallam Indians, and Sokaogan Chippewa Indians (Mole Lake Band). See Theodore Haas, *Ten Years of Tribal Government Under IRA* (Tribal Relations Pamphlet, U. S. Indian Serv. [currently the BIA] 1947). The procedure has been suggested for other Indian groups as well. See, e.g., Memo. Sol. Int., May 1, 1937 (status of Nahma and Beaver Island Indians). See generally *United States v. John*, 437 U.S. 634 (1978).

¹⁰⁶ The Nooksack Tribe voted to accept the IRA in 1935, but was not permitted to organize under it because it did not constitute a tribe as defined by the Act. Op. Sol. Int., M-35013 (Dec. 9, 1947). It was later found, based upon intervening events, to be a tribe whose existence predated the IRA. Op. Sol. Int., M-36833 (Aug. 13, 1971). Thus, the Secretary could take land in trust for the tribe, and the tribe could then organize under the IRA.

¹⁰⁷ Act of Aug. 13, 1946, 60 Stat. 1049 (codified as amended at 28 U.S.C. § 1505). The Indian Claims Commission was terminated in 1978. See Ch. 5, § 5.06[3].

¹⁰⁸ 25 U.S.C. § 70a.